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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

NO. 627

F. J. UTLEY AND D. T. UTLEY, APPELLANTS,

vs.

CITY OF ST. PETERSBURG, FLORIDA

Appeal from the Supreme Court of the State of Florida.

BRIEF FOR APPELLEES

WM. F. WAY,
Solicitor for Appellee.
St. Petersburg, Florida.

F. P. FLEMING,
E. J. L'ENGLE,
J. W. SHANDS,
Of Counsel for Appellee.
Jacksonville, Florida.

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CITY OF ST. PETERSBURG, FLORIDA, APPELLEE.

BRIEF ON BEHALF OF APPELLEE

The official report of the opinion of the Supreme Court of Florida in this case has not been published. The opinion may be found in 149 Southern Reporter at page 806.

STATEMENT OF THE CASE.

On *April 20, 1925*, the City Commission of the City of St. Petersburg, Florida, adopted a resolution providing for the grading and paving of a street and the construction of curbs, and declaring that the Commission should have the right to assess against abutting property the whole or any part of the expense of such improvements in proportion to benefits derived from such improvements. (Tr. 2.) On *May 21, 1925*, after publicly advertising for bids, which presumably indicated the street to be improved, a contract was let to the lowest bidder for such improvements. On or prior to *August 16, 1926*, the work was completed by the contractor and accepted by the City, the total cost being $40,937.46. On *August 16, 1926*, the

City formally accepted the completed work and directed that the total cost of the improvement be assessed against the abutting property upon a per front foot basis, the assessment being $18.6895 per front foot. By the same resolution it was directed that the Clerk publish notice that the Commission would sit for the purpose of hearing objections to the assessments on the 6th day of September, specifying the time and place of the meeting. These notices were published, *but neither the appellants nor their predecessors in title appeared or contested the assessment.* On the date specified in he notice, a resolution was adopted assessing the entire cost of the improvement against the abutting property and confirming and ratifying the assessments, and fixing a lien therefor on appellants' property of $934.48. The lien was recorded on the same day among the public records of Pinellas County, Florida. (Tr. 3, 4.)

Pending the construction of the improvements, the City, in the manner prescribed by Chapter 9914, Laws of Florida, 1923, authorized and issued bonds aggregating $900,000.00, covering seventy per cent of the cost of the improvement of the street in question and also the cost of improving other streets under Chapter 9914, and on January 18, 1926, authorized and issued $1,300,000.00 of bonds covering the remaining thirty per cent of the cost of the improvements in question and also the cost of other street improvements.

For all that the bill as amended shows, it appears that neither the appellants nor their predecessors in title took any step to prevent (1) the letting of the contract for improvements, (2) the issuing of the bonds, or (3) the levying of the assessments. They stood by, permitting the bonds and assessments to remain unquestioned until this suit was filed presumably shortly before April 2, 1931. A period of almost six years elapsed after the letting of the contract, and of approximately five years after the levying of the assessments, before this suit was instituted. No attempt is made by the bill as amended to explain the delay.

In 1930, special assessments not having been collected in season to pay the principal and interest of bonds issued by the City under Chapter 9914, Laws of Florida, 1923, including

the issues hereinabove mentioned, the City levied a tax of $276,280.62 upon all of the taxable property in the City of St. Petersburg, including appellants' property, for payment of interest on such bonds.

By the amended and supplemental bill of complaint it is alleged that Chapter 9914, Laws of Florida, 1923, is violative of the Constitution of the United States and the Constitution of the State of Florida, and hence that the assessments levied against the appellants' property in the year 1926 under such act and the ad valorem tax levied against appellants' property for the year 1930 for the payment in part of interest upon bonds issued under the act are void. The relief prayed is that the City be permanently enjoined from enforcing the special assessment and such ad valorem tax against appellants' property. Only minor departures from the provisions of Chapter 9914 on the part of the City in levying the assessments or imposing the ad valorem tax, or in issuing the bonds, are alleged in the bill. The only substantial complaint is that Chapter 9914, Laws of Florida, 1923, is unconstitutional and void.

The assessments were expressly validated by two other statutes of Florida, Chapter 14392, Laws of Florida, 1929, and Chapter 15511, Laws of Florida, 1931. It is contended by the bill that these acts are also violative of the Constitution of the United States and the Constitution of Florida. These contentions were denied by the Circuit Court for Pinellas County, Florida, on demurrer to the bill, and by the Supreme Court of Florida affirming the decree dismissing the bill.

THE STATUTE UNDER WHICH THE ASSESSMENT WAS MADE.

Chapter 9914, Acts of 1923, which is in effect an amendment to the statutory charter of the City of St. Petersburg, provides a system for assessing the cost of municipal improvements against benefited property, which is substantially the same as that prescribed by Chapter 9298, Acts of 1923, relating to all cities and towns in Florida. Under Chapter 9298, Acts of 1923, municipal bonds have been issued, validated and sold by Florida cities and towns in the amount of many millions of dollars. The analogous general statute (Chapter 9298) has been frequently construed and enforced by the Supreme Court of Florida in actions on municipal bonds and for the enforcement of assessments for local improvements (Klemm v. Davenport, 100 Fla. 627, 129 So. Rep. 904; Abell v. Town of Boynton, 95 Fla. 984, 117 So. Rep. 507). The statutory system prescribed by Chapter 9914, Acts of 1923, in respect to the City of St. Petersburg, differs in some details from that prescribed by the general act (Ch. 9298); and, for that reason, it may be appropriate to summarize the provisions of the statute directly under consideration.

The statute in question (Ch. 9914) provides that whenever the city shall have awarded contracts for local improvements, such as grading and paving streets, to be paid for by special assessments, it may determine the cost of the improvements and issue improvement bonds, pledging the full faith and credit of the city, to an amount not exceeding seventy per cent of the estimated cost. The bonds are to be general obligations of the city, and, if special assessments are not imposed and collected in season to pay the principal and interest, the city shall levy and collect on all the taxable property in the city a tax sufficient to pay the principal and interest as the same respectively become due and payable. (Section 1.)

Additional bonds, also constituting general obligations of the municipality, may be issued when the assessments shall have been confirmed, in excess of the bonds previously issued against the same work; but all of the bonds so issued may not

exceed the total amount of the assessment. All bonds issued under these sections are excluded from any limitation of indebtedness prescribed by the charter of the city or laws of the State. (Section 2.) Bonds issued under these sections are to mature in not more than ten substantially equal installments. (Section 3.) The statute provides that all bonds issued under its provisions shall have all the qualities of negotiable papers. (Section 5.)

Before any such bonds are issued the city officials are required to investigate and determine the legality of the proceedings. The resolution authorizing the bonds is required to contain a recital that the bonds are issued in conformity with the constitution and statutes of Florida, which recital shall import that there is constitutional and statutory authority to incur the debt and issue the bonds, and that all preceding conditions have been complied with. (Section6 .) It is expressly provided that the statute shall not be construed to require a referendum to ratify or approve the issuance of bonds under this statute. (Section 7.) The act, Chapter 9914, is declared to constitute full authority for the issuance of bonds which it authorizes without reference to any other statute, and the act in question is required to be construed as an additional and alternative method for financing such improvements. (Section 8.)

When the improvement is completed, the city officials are required to prepare an "assessment list" describing the properties to be assessed and giving the name of each owner and the amount proposed to be assessed against each lot or parcel of land. The assessment list must be entered in a book, prepared for that purpose, known as "Assessment Book for Local Improvements," which is expressly declared to be a public record. It is provided that the entries in the assessment book of any assessment "shall be and constitute notice to the public of the lien against the land so assessed and no other record or notice shall be necessary." No error or omission in regard to the name of the owner shall invalidate an assessment. The Director of Finance, who is a city official, is required to publish the assessment list "once a week for two weeks in some newspaper published in said municipality, together with a no-

tice that at the time and place mentioned in said notice, not less than fifteen days from the date of the first publication, the governing authority of said municipality will meet to hear and determine any objections or defenses that may be filed to said assessments or the amount thereof." Such notices shall state the general character of the improvements in question. (Section 9.) The assessments shall be made and apportioned as the city officials may determine—"the whole or such part as the governing authority may fix may be assessed upon properties specially benefited by the improvement, in proportion to the benefit derived therefrom; or, if the governing authority shall find that all the property abutting on such improvement is specially benefited, it may direct that the whole or such part of the costs and expenses thereof as it shall fix be assessed against the property abutting upon the improvement according to the frontage thereof." (Section 10.)

In view of the attack made upon the statute in question, because of its alleged failure to provide due process of law for the protection of the property owners, it is important to note that by Section 13 the owner of any real estate assessed for an improvement or anyone having an interest therein may appear at the time and place fixed for the hearing, which is required by Section 9, and at such hearing object to the proposed assessment again his property or the amount thereof. It will be noted that the property owner is given the right at this hearing to object not merely to the amount charged against his property, but to the proposed assessment itself. The city officials must hear and determine all objections and protests to the proposed assessments "under such reasonable rules and regulations" as they may adopt. Witnesses may be called and examined under oath. At any such hearing the city officials may alter, change and correct any assessment; but no assessment shall be increased without notice to the property owner and others interested. The city officials shall, by resolution, approve all assessments as finally fixed and adjusted at such hearings. From the date of such confirmation, such assessments shall constitute a lien superior to all others except state and county taxes. It is provided in so many words that "all

persons who fail to object to the proposed assessments in the manner herein provided shall be deemed to have consented to and approved the same." (Section 13.) A certified copy of the assessment list when finally confirmed is to be recorded with the Clerk of the Circuit Court, who is the official custodian of public land records. (Section 14.)

For the period of thirty days after the confirmation of a special assessment, "any person aggrieved shall have the right to contest the legality thereof by suit action, writ or special proceeding"; but after the expiration of that time no action shall lie to question the legality of the special assessment for any cause. (Section 15.)

All special assessments are payable in thirty days or they may be made payable by the City in ten equal annual installments with interest at eight per cent payable annually. (Section 16.) Moneys arising from payment of assessments shall constitute a fund for the payment of the bonds. (Section 17.) Delinquent assessments and installments of assessments are to bear interest at the rate of one per cent per month after maturity. (Section 18.)

If the assessment is in default for as much as thirty days, it may be enforced by bill in equity or suit at law. The decree or judgment shall include a reasonable fee for the city's attorney; "but in no event shall the municipality be liable for the payment of the attorney's fee herein provided for." The owner or all persons interested in the land shall be parties defendant in the lien enforcement proceeding. The statute prescribes the procedure. (Section 19.)

If any assessment shall be set aside by the judgment of a court, or if the city officials are satisfied that the assessment is so defective that it can not be enforced, or if such officials have omitted to make any assessment, the city is authorized to cause a new assessment to be made, following as near as may be the provisions of the act; and, if the second assessment is annulled, other assessments may be made until one is made which is valid. (Section 20.)

No omission or irregularity in the proceedings in, or pre-

liminary to, any such assessment shall affect its validity, if the assessment roll has been confirmed by the city officials. The assessment roll and its record is declared to be competent and sufficient evidence that the assessment was duly levied, and that all other proceedings were duly had and performed as required by the statute. Clerical misprisions shall not invalidate the assessment. (Section 21.)

It is expressly enacted that this act shall not repeal any other statute relating to the same subject matter, unless they are in conflict. It is further provided that the act shall not limit or amend the powers of the City contained in the statutes constituting its charter or relating to the city. Finally, the act is declared "to provide a supplemental, additional and alternative method of procedure for the benefit of said municipality, and shall be liberally construed to effectuate its purpose." (Section 25.)

THE VALIDATING ACTS

Chapter 14392, Acts of 1929, provides that all special assessments levied and imposed, and all certificates of indebtedness issued by the City of St. Petersburg prior to this Act becoming effective are ratified and confirmed; any irregularities or imperfections in any of the proceedings prior to or in levying and imposing such assessments or the issuance of such certificates of indebtedness to the contrary notwithstanding.

Chapter 15511, Acts of 1931, provides that all special assessments levied and imposed, and all certificates of indebtedness issued by the City of St. Petersburg prior to this Act becoming effective, are ratified, validated and confirmed.

Both of these statutes are special acts applicable only to the City of St. Petersburg, but they are public laws within the power of the Legislature of Florida. Both acts became effective when approved. Both statutes were passed after the levy of the assessment and the issuance of the bonds involved in this case.

ARGUMENT

While appellants enumerate some nine points upon which they predicate error by the Supreme Court of Florida (Tr. 58-61), but few of them are based upon any objection to the act under the Federal Constitution. As above noted, the act affords ample opportunity to be heard, after reasonable notice to every owner of property assessed before the assessment is finally levied. Appellants' failure to present their objections after timely notice within the time provided by the act forever precludes and estops them from questioning the regularity of the proceedings resulting in the assessment. Hence, the assertions of appellants, (1) that the assessments exceeded the cost of the improvement, (2) that the assessments were not interposed in proportion to benefits, (3) that there was no express findings on the part of the City Commission that the property was benefited to the extent of the cost of the improvements, are objections which come too late. These are mere irregularities which were waived by appellants' failure to assert them when opportunity to do so was accorded them under the terms of the act.

Chicago, Milwaukee, etc. R. Co.
v. Risty, 276 U. S. 567;

Moore v. City of Yonkers, 235 Fed.
485, 9 A. L. R. 597;

Abell v. Boynton, 95 Fla. 984,
117 So. 507.

Equally untenable is appellants' contention that this Court may review or will not follow the determination of the Supreme Court of Florida that neither Chapter 9914 or the proceedings thereunder were violative of appellants' rights under the Florida Constitution.

General American Tank Car Corp.
v. Day, 270 U. S. 367.

The remaining contentions of appellants appear to be that Chapter 9914, Laws of Florida, 1923, is in conflict with the Fourteenth Amendment to the Constitution of the United States. These contentions appear to be predicated upon appellants' assumption that under the Fourteen Amendment,

> (1) A city may not incur a valid obligation for paving and grading streets, payable out of special assessments of the property benefited, until after it affords notice and an opportunity to the owners of the abutting property, as well as all taxpayers of the City, to protest the improvement;
>
> (2) A city may not validly incur any indebtedness for grading and paving streets unless it is expressly recited in the ordinance or resolution that such improvement was a necessity or would serve the public convenience.

Neither of these propositions are sound.

THE FOURTEENTH AMENDMENT TO THE FEDERAL CONSTITUTION DOES NOT REQUIRE NOTICE TO PROPERTY OWNERS OF PROCEEDINGS TO DETERMINE WHETHER A MUNICIPAL IMPROVEMENT SHALL BE CONSTRUCTED OR NOT.

It is provided by Section 9 of Chapter 9914, Laws of Florida, 1923, that abutting property may not be assessed until after the improvement has been completed and its cost ascertained. Then and not until then is the abutting property owner affected. By the same section it is provided that the City Commission must sit at a time and place fixed by notice published for at least two consecutive weeks to hear objections of those whose property is to be assessed. By Section 13 of the act the property owner may object not only to the amount of the assessment, but to the imposition of any assessment on his property. If his objection is not complied with, he may within thirty days apply for relief to the courts. It is not pretended in this case that the notice was not given or that the Commission did not sit at the time and place specified in the notice. The record affirmatively shows to the contrary. (Tr. 23.) The appellants do not allege that they or their predecessors in title did not have actual notice of the time, place and purpose of such hearing. They do not claim that they were not informed, prior to letting of the contract, that the work had been decided upon. Their position is simply that the law is defective under the Fourteenth Amendment to the Constitution in not requiring notice and an opportunity to object to the City Commission going forward wih the project, and that this technical objection was not waived by appellants' silence and acquiescence while the improvement of their property progressed and for almost five years after its completion.

This highly technical objection is without substantial merit and has been repeatedly and expressly denied by this Court. The rule is that property owners and taxpayers are not entitled to notice of proceedings for determining whether or not to

construct the improvement. It is sufficient if they are given notice of an opportunity to be heard before their property is assessed to pay the cost of the work.

> "Due process of law does not require notice of a proceeding to determine merely whether an improvement shall be constructed without at the same time establishing the boundaries of the assessment district. It is enough if land owners who may be assessed are later afforded a hearing upon the assessment itself. Londoner v. Denver, 210 U. S. 373, 378; Goodrich v. Detroit, 184 U. S. 432, 437, et seq; Voight v. Detroit City, 184 U. S. 115, 122; Embree v. Kansas City Road District, 240 U. S. 242; Soliah v. Heskin, 222 U. S. 522."
>
> Chicago, Milwaukee, etc. R. Co.
> v. Risty, 276 U. S. 567.

In Londoner v. Denver, 210 U. S. 373, the property owner contended that the failure of the city authorities to give notice of their proceedings to determine whether or not a street should be paved operated to deprive him of his property without due process of law. The statute there involved required such notice, but the statute was not complied with in this respect.

> "The proceedings, from the beginning up to and and including the passage of the ordinance authorizing the work, did not include any assessment or necessitate any assessment, although they laid the foundation for an assessment, which might or might not subsequently be made. Clearly all this might validly be done without hearing to the landowners, provided a hearing upon the assessment itself is afforded. Voigt v. Detroit, 184 U. S. 115, 46 L. Ed. 459, 22 Sup. Ct. Rep. 337; Goodrich v. Detroit, 184 U. S. 432, 46 L. Ed. 627, 22 Sup. Ct. Rep. 397. The legislature might have authorized the making of improvements by the city council without any pe-

tition. If it chose to exact a petition as a security for wise and just action it could, so far as the Federal Constitution is concerned, accompany that condition with a provision that the council, with or without notice, should determine finally whether it had been performed."

The act meets this essential requirement that notice and an opportunity to contest the assessment be given at some stage of the proceedings before the assessment is imposed.

NO EXPRESS LEGISLATIVE DECLARATION OF THE NECESSITY OR DESIRABILITY OF THE IMPROVEMENT IS REQUIRED BY THE FEDERAL CONSTITUTION.

There is no provision of the Constitution of the United States which requires the ordinance or resolution of a municipal governing board to recite the necessity or desirability of the improvement. All that is required is that the improvement serve a public purpose. This is not to be determined from the recitals of the resolution. Whether it is a public purpose or not is a judicial question.

Milheim v. Moffat Tunnel Dist.,
262 U. S. 710.

It is elementary that, unless expressly so provided by its charter, an ordinance or resolution need not affirmatively or expressly recite the authority under which it is enacted or adopted or the necessity for its enactment. The ordinance or resolution when enacted or adopted furnishes its own reason.

2 McQuillin on Municipal Corporations, p. 150, 617.

It is not pretended by appellants that in point of fact the improvement here involved did not serve a public purpose.

THE ACTS VALIDATING THE ASSESSMENTS WERE EFFECTIVE.

The two subsequent acts of the Legislature of Florida (Chapters 14392 and 15511), validating all assessments and bonds issued under Chapter 9914, Laws of Florida, 1923, put at rest all questions here involved. Even though the assessments were imposed by the City without semblance of legislative authority, it must be conceded that it lay within the power of the legislature of Florida to authorize the improvement of the city's streets and the levying of special assessments to pay the cost of such improvement. Precisely the same contentions now advanced by appellants were made and denied in Charlotte Harbor & Northern R. Co. v. Welles, 260 U. S. 8. In that case, this Court affirmed the ruling of the Supreme Court of Florida that the Legislature of Florida could validate and ratify a special improvement tax which was void when assessed, that is, an assessment which County Commissioners were without power to make, not merely one which was defective because of irregularities in the execution of a power. The principle is laid down in that case and many others that the legislature of a state may ratify any act of a municipality which it could have authorized.

See:

City of Jacksonville v. Basnett, 20, Fla. 525;

Wade on Retroactive Laws, Sec. 252;

Boardman v. Beckwith, 17 Iowa 294;

Grimm v. Weissenberg, 57 Penn. State 436;

Middleton v. City of St. Augustine, 42 Fla. 287, 29 So. 421;

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Embree v. Kansas City, 240 U. S. 242,
36 Sup. Ct. 317, 60 Law Ed. 624;
(Opinion by Mr. Justice Van Devoenter).

Fallbrook Irrigation Dist. v. Bradley,
164 U. S. 112, 17 Sup. Ct. 56,
41 Law Ed. 369;

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35 So. 88;

Everglades S. & L. Co. v. Board of Supervisors,
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Bannerman v. Catts, 85 So. 336, 80 Fla. 170;

Chase v. Orange County, 81 Fla. 237,
87 So. 770;

A. C. L. v. Gainesville, 83 Fla. 275,
91 So. 118;

Quill v. City of Indianapolis, 124 Ind. 292, 23 N. E. 788 (7 L. R. A. 681);

Page & Jones on Taxation by Assessment, Sec. 659;

Oregon & C. Ry. v. Portland, 25 Ore. 225, 35 Pac. 452, 22 L. R. A. 713.

By validating the special assessments, the legislature has determined that the property affected was benefited by the improvements. Whether or not the property was benefited is a legislative question which has been determind by the validating acts.

Prior v. Buehler & Coney, 170 Mo. 439, 71 S. W. 205;

Smith v. Worcester, 182 Mass. 232, 65 N. E. 40, 59 L. R. A. 728;

Duncan v. Ramish, 142 Cal. 686, 76 Pac. 661;

Chicago & A. Ry. Co. v. City of Joliet, 153 Ill. 649, 39 N. E. 1077;

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Bi-Metallic Inv. Co. v. State Bd. of Equalization, 239 U. S. 441, 445, 446, 60 Law Ed. 372.

APPELLANTS ARE ESTOPPED BY THEIR LACHES TO CONTEST THE VALIDITY OF THE ASSESSMENT OR OF THE STATUTE UNDER WHICH LEVIED.

As pointed out in the statement of facts herein, the work was authorized in April, 1925. Notice of public letting of contract for the improvement was duly advertised and the contract was awarded in May of the same year. The work was completed prior to August 16, 1926. The appellants do not claim that they were ignorant of any of these matters at the time they occurred. They stood by and saw their property improved without questioning the authority of the City to construct the improvements. They admit and allege that under Chapter 9914, Laws of Florida, 1923, the City issued at least $2,200,000.00 of bonds to pay the cost of this and other improvements. Presumably the bonds were validated by judicial proceedings in which appellants were expressly authorized by statute to intervene and contest the right of the City to issue such bonds. It is not pretended that appellants had no notice of the issuing of the bonds or that they raised any question as to the City's right so to do. Without offering any excuse for deferring their objection for so long a period, the appellants waited until April 2, 1931, or for five long years, before questioning the right of the City to incur the expense of so improving appellants' property. While it is said that April 2, 1931, is the date upon which the supplemental and amended bill was filed and that there is nothing in the record to show when the suit was instituted, it may be confidently asserted that appellants would have caused the record to show the date of institution of the suit had such date been early enough to preclude the charge of laches.

Under these circumstances, the appellants are guilty of such laches that they are estopped to question the authority of the City to construct the improvements and to assess the cost thereof against its taxpayers and property owners.

Marion v. Pilot Mountain, 177 N. C. 118, 87 S. E. 53;

Ithaca v. Babock, 36 Misc. 49, 72 N. Y. Supp. 49.

The views expressed by the Supreme Court of Florida in Abell v. Town of Boynton, 95 Fla. 984, are peculiarly applicable to the facts of this case.

> "Under the law appellant could have complained of the assessment before the town council sitting as an equalizing board, he could have enjoined the letting of the contract for the improvement over his lands or he could have intervened and resisted the validation of the bonds, but having failed to avail himself of any of these remedies provided for his protection the general rule is that he is estopped and cannot be heard by a judicial tribunal to assert the injustice, *the invalidity or the unconstitutionality* of the assessments against him. Francomb v. City & County of Denver, 252 U. S. 7, 40 Sup. Ct. Rep. 271, 64 Law Ed. 424; Milheim v. Moffat Tunnel Improvement Dist., 262 U. S. 710, 43 Sup. Ct. Rep. 694, 67 Law Ed. 1194; First National Bank of Greenley v. Board of Com'rs. of Weld County, Colo., 264 U. S. 450, 44 Sup. Ct. Rep. 385, 68 Law Ed. 784; Gorham Mfg. Co. v. State Tax Commission of State of New York, 266 U. S. 265, 45 Sup. Ct. Rep. 80, 69 Law Ed. 279; Chicago, Milwaukee, St. Paul and Pacific R. R. Co. v. Risty, 72 Law. Ed. ..... U. S. Supreme Court Advance Opinions, April 16, 1928, page 365; Hampton v. City of Gainesville, 64 Fla. 303, 60 So. Rep. 185; Anderson v. City of Ocala, 67 Fla. 204, 64 So. Rep. 775, 52 L. R. A. (N. S.), 287; Moore v. City of Yonkers, 235 Fed. Rep. 485; 9 A. L. R. 577; City of Bartlesville v. Holm, 40 Okla. 467, 139 Pac. Rep. 273, 9 A. L. R. 627, note 634, citing cases dealing with every phase of the loss of the right to contest an assessment for public improvements by waiver, estoppel or other cause. Lemoyne v. West Chicago Park Com'rs., 116 Ill. 41, 4 N. E. Rep. 498, 6 N. E. Rep.

48; McSheroy v. Wood, 102 Cal. 647, 36 Pac. Rep. 1010; McGregor v. Hogan, 263 U. S. 234, 44 Sup. Ct. Rep. 50, 68 Law Ed. 282. 2 Page & Jones on Taxation by Assessment, Section 927. Dillon on Municipal Corporations (5th Ed.) Sections 1454, 1455 and 1457N."

CONCLUSION.

It is respectfully submitted that the objections of appellants to the acts in question are without merit, and that the judgment appealed from should be affirmed or the appeal dismissed.

WM. F. WAY,
Solicitor for Appellee.
St. Petersburg, Florida.

F. P. FLEMING,
E. J. L'ENGLE,
J. W. SHANDS,
Of Counsel for Appellee.
Jacksonville, Florida.